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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ZENA HASSAN IBRAHEM,

12 Plaintiff,

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14 v.
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17 MICHAEL CHERTOFF, et al.,

18 Defendants.
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CASE NO: 06-CV-2097 W (LSP)

ORDER REMANDING
ACTION TO THE
DEPARTMENT OF
HOMELAND SECURITY,
CITIZENSHIP &
IMMIGRATION SERVICES

21 On September 28, 2006, Plaintiff filed a complaint to review her application for
22 naturalization because 120 days had elapsed since she was examined by the Department
23 of Homeland Security. The Court **REMANDS** this matter to the Department of
24 Homeland Security, Citizenship & Immigration Services (CIS) with instructions to
25 grant or deny the application under § 1446(e) within 90 days.

26 Under 8 U.S.C. § 1446, CIS may examine any applicant for naturalization.
27 Section 1447(b) provides CIS 120 days from the examination date to grant or deny the
28 application. Additionally, "the court has the last word by exercising exclusive

1 jurisdiction over those naturalization applications on which the [CIS] has failed to act
2 in a timely fashion.” United States v. Hovsepian, 359 F.3d 1144, 1162 (9th Cir. 2004).
3 Section 1447(b) gives the court jurisdiction either to set a hearing to determine the
4 application itself, or to remand to CIS with appropriate instructions.

5 According to the Complaint, Plaintiff filed an application for naturalization under
6 8 U.S.C. §1421 in approximately August 2005. (Compl. ¶ 4.) On January 12, 2006,
7 Plaintiff was examined by Defendant (Compl. ¶ 5), who informed Plaintiff that she had
8 passed the English and History tests “and that she would receive a decision once certain
9 ‘security’ checks had been received.” (Compl. ¶ 6.) As of September 28, 2006,
10 Defendant had not made a decision on Plaintiff’s application.

11 The vast majority of courts have held that the 120 day clock begins to tick on the
12 interview date, not at the end of the entire “examination process.” E.g., Said v.
13 Gonzales, No. C06-986P, 2006 WL 2711765, at *1 (W.D. Wash. Sept. 21, 2006) (citing
14 cases). But see Danilov v. Aguirre, 370 F. Supp. 2d 441, 443 (E.D. Va. 2005). The
15 Court agrees that the “examination” mentioned in §1447(b) refers to the initial
16 interview, not the entire examination process. Thus, the Court has subject matter
17 jurisdiction over the case because the 120 day period expired in May 2006.

18 Plaintiff is entitled to a timely hearing on her petition in accordance with the
19 procedure described in § 1446. However, the most recent amendments to § 1447
20 suggest a congressional preference favoring CIS determinations where possible. Indeed,
21 CIS is in a better position than this Court to conduct necessary background checks and
22 interpret the results. See Kelifa v. Chertoff, 433 F. Supp. 2d 836, 842 (E.D. Mich. 2006).
23 Because the statutory language gives the Court discretion on whether to set a hearing
24 or remand with appropriate instructions to CIS, the Court elects to remand to CIS.
25 Remand is consistent with the general rule that courts “should remand a case to an
26 agency for decision of a matter that statutes place primarily in agency hands.” INS v.
27 Ventura, 537 U.S. 12, 16 (2002).

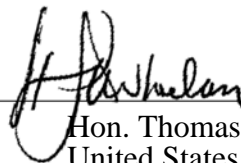
28 The Court, however, recognizes that further delay would seriously compromise

1 Plaintiff's right to a timely determination of her application. The Court must exercise
2 its discretion in favor of the applicant, so as not to add to the requirements for
3 naturalization. In re Kullman, 87 F. Supp. 1001, 1003 (W.D. Mo. 1949). Thus, the
4 Court finds it appropriate to impose a 90 day time limit for final CIS action.

5 Accordingly, this action is **REMANDED** to the Department of Homeland
6 Security, Citizenship & Immigration Service for a timely determination of Plaintiff's
7 application for naturalization.

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9 **IT IS SO ORDERED.**

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11 DATED: October 13, 2006

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14 Hon. Thomas J. Whelan
United States District Judge